



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 19, 1991

Ms. Trudi Dill
Deputy City Attorney
City of Temple
Municipal Building
Temple, Texas 76501

OR91-382

Dear Ms. Dill:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12803.

The City of Temple (the city) received an open records request for "the management letters and accompanying independent audits of the city of Temple finances for the past five fiscal years -- 1990, 1989, 1988, 1987 and 1986." You seek to withhold portions of the audits and management letters pursuant to section 3(a)(11) of the Open Records Act.

Section 3(a)(11) of the act excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the deliberative process. - Open Records Decision No. 538 (1990). The purpose of this section is "to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.).

In Open Records Decision No. 429 (1985), this office indicated that information protected by section 3(a)(11) must be prepared by a person or entity with an official reason or duty to provide the information in question. *See also* Open Records Decision Nos. 283, 273 (1981). This helps assure that the information plays a role in the deliberative process; if it does not, it is not entitled to protection under section 3(a)(11). Open Records Decision No. 464 (1987). In this regard, section 3(a)(11) may protect solicited opinions of those who the city has hired to conduct the audit and otherwise advise the city with regard to its internal control and accounting procedures.

Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinion, and recommendation. Open Records Decision No. 450 (1986). If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982). We generally agree that the city may withhold the portions of the requested information that you have marked as coming under the protection of section 3(a)(11). We have, however, indicated on the records at issue those portions of the audit and management letters that you must release because of the factual nature of the information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-382.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/RWP/lb

Ref.: ID# 12803
ID# 12880

Enclosures: Marked documents

cc: Steve Walters
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